

**IN THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE
SITTING AS THE LAW COURT**

LAW DOCKET NO. PEN-14-6

STATE OF MAINE

v.

AMANDA L. BROTHERS

ON APPEAL FROM THE NEWPORT DISTRICT COURT

BRIEF OF THE APPELLANT

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STATEMENT OF FACTS

On June 28, 2012, Officer Morin of the Dexter Police Department was on duty patrolling the Dover Road. (Appendix at 10-12). At approximately 8:20 p.m. he noticed a vehicle travelling in the opposite direction that did not have its headlights on. (A. at 12). The officer stopped the vehicle because everyone other vehicle in the area had their headlights on. (*Id.*). The officer did not articulate any other rationale for stopping the vehicle.

After stopping the vehicle, the officer identified the driver as Amanda Brothers. (A. at 12-13). After performing a license check, the officer learned that Ms. Brothers' license had been suspended that same day. (A. at 13). Ms. Brothers told the officer that she thought that her license went under suspension at the end of the day, not at the beginning. (A. at 14). The officer arrested Ms. Brothers, who was subsequently released on bail. (*Id.*).

The sun had not set at the time the officer pulled over Ms. Brothers' vehicle. (A. at 11). The officer could not remember whether his windshield wipers were in use at the time of the stop, nor could he recall if it was raining at that time. (A. at 20-21). The officer also testified that he did not have any problems with visibility, specifically noting that he could see Ms. Brothers' vehicle when it was more than a football field away. (A. at 20). Ms. Brothers testified that it was not raining at the time she was stopped by the officer. (A. at 24-25). She testified that she did not have any problems with visibility at that time. (A. at 26). Ms. Brothers further testified that it was still light out at the time of the stop. (A. at 25).

PROCEDURAL HISTORY

On June 28, 2013, Amanda Brothers was arrested for Operating After Suspension and Violation of a Condition of Release. (A. at 14). On August 7, 2013, the State of Maine field a complaint in the Newport District Court, formally charging Ms. Brothers with OAS and VCR. (A. at 2). On August 14, 2013, Ms. Brothers entered a plea of not guilty and filed a request for appointment of counsel. (*Id.*). That motion was granted on August 20, 2014. (*Id.*).

On September 3, 2013, Defendant's counsel filed a motion to suppress. (A. at 3). The Court held a hearing on the motion to suppress on September 11, 2013. (*Id.*). After the hearing, the Court granted the motion to suppress in part; suppressing the statements of the Defendant, but denying the motion to suppress relating to the stop of the Defendant's vehicle. (*Id.*). Following the denial of the motion to suppress, the Court granted a continuance of the trial to allow for the preparation of the transcript of the suppression hearing. (*Id.*).

On December 11, 2013, the Defendant entered a conditional plea. (A. at 4). The Defendant filed a notice of Appeal on December 18, 2013. (*Id.*).

ISSUE FOR REVIEW

Does the public safety rationale permit a police officer to stop and seize the driver of a vehicle when the driver is operating her vehicle in accordance with all applicable laws and the officer cannot articulate specific facts giving rise to a concern for public safety?

SUMMARY OF ARGUMENT

The District Court erred when it failed to suppress all information obtained by the illegal stop and seizure of Ms. Brothers' vehicle. Despite finding that the statutory requirement for use of headlights in a motor vehicle did not apply to the circumstances of the case, the Court failed to suppress the evidence out of the stop. The Court relied upon *State v. Pinkham* to allow the stop and seizure based upon a public safety rationale. In doing so, the Court erred. *Pinkham* permits a officers to perform a public safety stop based upon specific and articulable facts. Here there were none. The facts were undisputed that Ms. Brothers was operating her vehicle in a proper and legal manner. The officer did not articulate (not could he) a public safety concern justifying the stop. Accordingly, the Court erred when it denied the Defendant's motion to suppress.

ARGUMENT

The Court Erred When It Determined a Stop and Seizure of the Defendant Was Reasonable Under the Public Safety Justification In the Absence of Specific and Articulate Facts.

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” U.S. CONST. amend. IV. “The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures” ME. CONST. art. 1, § 5. As this Court has stated: “The fourth amendment to the United States Constitution and article I, section 5 of the Maine Constitution protect us from unreasonable intrusions of police officers and other government agents.” *State v. Caron*, 534 A.2d 978, 979 (Me.1987).

“A traffic stop of a motorist by a law enforcement officer is a seizure for the purposes of the Fourth Amendment of the United States Constitution and article I, section 5, of the Maine Constitution.” *State v. LaPlante*, 2011 ME 85, ¶ 8, 26 A.3d 337, 339 (citing *Illinois v. Lidster*, 540 U.S. 419, 425-26). In almost all circumstances, a warrantless seizure is unreasonable in the absence of an objectively reasonable, articulable suspicion that criminal conduct has taken place, is occurring or imminently will occur. *LaPlante*, ¶ 8. This Court recognizes that “every traffic stop involves some degree of interference” with an individuals right to privacy. *Id.* at ¶ 16. This Court further held “the resulting intrusion on a person’s individual autonomy is not insubstantial.” *Id.*

“An investigatory stop is justified if at the time of the stop the officer has an articulable suspicion that criminal conduct has taken place, is occurring, or imminently will occur, and the officer's assessment of the existence of specific and articulable facts

sufficient to warrant the stop is objectively reasonable in the totality of the circumstances." *State v. Tarvers*, 1998 ME 64, ¶ 3, 709 A.2d 726, 727 (internal quotation marks omitted). Reasonable articulable suspicion "is considerably less than proof of wrongdoing by a preponderance of the evidence," but "[t]he suspicion needs to be based on more than speculation or an unsubstantiated hunch." *State v. Burgess*, 2001 ME 117, ¶ 8; quoting *State v. Eklund*, 2000 ME 175, ¶ 6, 760 A.2d 622, 624.

This Court has articulated that public safety concerns may provide another rationale to justify a traffic stop. "Safety reasons alone can be sufficient to support an automobile stop if they are based upon specific and articulable facts." *State v. Pinkham*, 586 A.2d 730 (Me. 1991). The specific and articulable facts must demonstrate some improper or unsafe manner of driving (an "officer's observation of the defendant's misuse of the marked lanes could furnish "specific and articulable facts" to justify pulling him over for safety purposes to advise him of his improper use of the intersection" *State v. Pinkham*, 565 A.2d 318, 320. (Me. 1989)).

Notwithstanding the public safety rationale, the protections of the Fourth Amendment are not erased simply because an officer acts in a non-investigatory capacity. "It is surely anomalous to say that the individual ... [is] fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara v. Municipal Court*, 387 U.S. 541, 530, 87 S.Ct. 1741, 18 L.Ed.2d 930 (1967) (footnote omitted).

"Whether the seizure of a person by a police officer acting in his or her noninvestigatory capacity is reasonable depends on whether it is based on specific articulable facts and requires a reviewing court to balance the governmental interest in

the police officer's exercise of his or her "community caretaking function" and the individual's interest in being free from arbitrary government interference. *U.S. v. King*, 990 F.2d 1552, 1560 (10th Cir. 1993) (citing *United States v. Brignoni-Ponce*, 422 U.S. at 878, 95 S.Ct. at 2578; *Terry v. Ohio*, 392 U.S. at 21, 88 S.Ct. at 1880).

This Court's "review of a motion justice's findings of historical facts is deferential,' and we review a challenge to the legal conclusions drawn from the historical facts de novo." *State v. Burgess*, 2001 ME 117, ¶ 8 quoting *State v. Connors*, 1999 ME 125, ¶ 8, 734 A.2d 195, 198.

In this case, Ms. Brothers was driving her vehicle on Route 7 in Dexter, Maine at approximately 8:20 p.m. on June 28, 2013. Sunset that day was 8:28 p.m. The officer noticed that Ms. Brothers' vehicle did not have its headlights on, unlike other vehicles in the area. Based solely on this lone observation, the officer executed a traffic stop, seizing Ms. Brothers. This stop was unreasonable.

Title 29-A §2607 governs the use of headlights. It provides three separate instances that require the use of headlights:

- "A. During the period 1/2 hour after sunset to 1/2 hour before sunrise;
 - B. At any time when, due to insufficient light or unfavorable atmospheric conditions, including, but not limited to, rain, freezing rain, fog or snow, persons or vehicles on the way are not discernible for a distance of 1,000 feet ahead; and
 - C. At any time when windshield wipers are in constant use."
- (29-A M.R.S.A. §2607(1)).

Subsection A does not apply, as the stop occurred prior to sunset, and headlights are not required to be used until ½ hour *after* the setting of the sun. The Court specifically found that the stop occurred prior to sunset. (A. at 33). Subsection B is also inapplicable, the officer testified that he could see Ms. Brothers from a distance of more

than 1,000 feet and Ms. Brothers testified that she had no problems seeing other vehicles or pedestrians. In fact, the Court also found that there was at least 1,000 feet of visibility. (*Id.*). Finally, subsection C was also inapplicable. The officer could not remember whether his own wipers were in use and Ms. Brothers testified that she was not using her wipers. The Court did not find that Ms. Brothers' headlights were required to be on due to the use of windshield wipers. (A. at 32-33). Accordingly, Ms. Brothers' use (or non-use) of her headlights was in accordance with Maine law.

Ms. Brothers was operating her vehicle in accordance with Maine law. The only reason the officer pulled her over was because her headlights were off and other drivers' headlights were illuminated. However, as shown above, Ms. Brothers driving was lawful. She did not need to have her headlights on. The mere fact that other drivers were operating their vehicles with headlights illuminated cannot serve as a basis to stop drivers who are operating their vehicles without headlights when they are under no requirement to do so.

There was no evidence presented at the suppression hearing demonstrating that Ms. Brothers' driving posed any safety concern. There was no evidence of erratic driving or improper operation. The officer did not articulate any visibility concerns. The officer never stated that he had any safety concerns for other drivers in the area, pedestrians or Ms. Brothers herself. Put simply, the officer never articulated any specific facts demonstrating a public safety risk and never articulated that a public safety concern was the impetus behind the stop.

Persons who are obeying the laws of the road and operating their vehicles in an appropriate and safe manner are have the right to be free from arbitrary police seizures.

In this case, Ms. Brothers was operating her vehicle in accordance with Maine law. It is unreasonable to stop a driver based upon an observation that he or she is simply driving in a manner that is different (but still legal) than the other drivers in the area. There would simply be no limit to an officer's discretion if that were the case. Can law enforcement pull over a driver whose windows are down when other drivers' windows are up? Can law enforcement stop a driver who is using his headlights when everyone else is not?

The trial Court's conclusion that the public safety concern justified the stop in this case eviscerates the protections of the Fourth Amendment. The Fourth Amendment's protections apply regardless of whether an officer is acting in an investigatory or a non-investigatory fashion. In either case, the officer must be able to articulate specific facts justifying a stop/seizure and the officer's assessment of the facts must be objectively reasonable in light of the totality of the circumstances. "A stop is justified where an officer's assessment of the existence of specific and articulable facts indicating a possible violation of law or a public safety risk is objectively reasonable considering the totality of the evidence." *State v. O'Connor*, 2009 ME 91, ¶10, 977 A.2d 1003, 1005-6 (Me. 2009).

In order for the stop and seizure of Ms. Brothers to be constitutionally valid, there had to be (1) specific and articulable facts that there was a public safety risk and (2) the officer's assessment of that risk has to be objectively reasonable considering the totality of the evidence. With respect to the first prong, there were no specific facts presented at hearing demonstrating a safety risk. The only reason that Ms. Brothers was detained was that her lights were off. However, her lights were not required by law to be on. There was ambient light, no visibility problems, and Ms. Brothers' windshield wipers were not

in use. Accordingly, the non-use of headlights was appropriate as a matter of law and there were no facts presented at the suppression hearing to support a finding that Ms. Brothers' non-use of headlights presented a public safety risk.

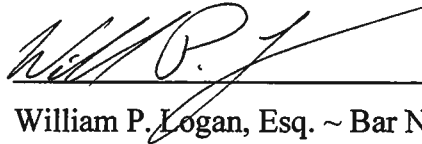
Likewise, the officer's assessment was not objectively reasonable. The totality of the circumstances demonstrates that the stop was unreasonable. Based on the evidence at hearing the circumstances were as follows. The officer noticed a vehicle that did not have its headlights in use. Other cars in the area did have their headlights on. It was before sunset. There was ambient light present. Visibility was not restricted to under 1,000 feet. Ms. Brothers was not using her windshield wipers at the time of the stop. These facts, considered in totality, do not present a public safety risk to justify abrogating a person's fourth amendment protections. Accordingly, the District Court erred when it denied the Defendant's motion to suppress.

CONCLUSION

The Defendant Amanda Brothers was operating her vehicle in a lawful manner at the time she was stopped and detained by law enforcement. The only rationale for the stop was her non-use of headlights. By law, Ms. Brothers was not required to have her headlights on at the time of the stop. There was no other evidence articulated by the officer to justify the stop. Accordingly, the Court erred when it determined that the public safety rationale justified the stop in the absence of specific, articulable facts demonstrating a safety concern. Accordingly, this Court should vacate the decision and remand the case to the District Court for an order granting the Defendant's motion to suppress.

CERTIFICATE OF SERVICE

I, William P. Logan, Attorney for the Appellant in the above matter, hereby certify that I have served the original and nine copies of the foregoing Brief of the Appellant upon the Court via hand delivery. Two copies have been served upon Office of the District Attorney for Penobscot County via U.S. Mail on this 24th day of April 2014.

A handwritten signature in dark ink, appearing to read 'William P. Logan', is written over a horizontal line.

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